

# DEPARTMENT OF STATE REVENUE

## Revenue Ruling #2002-03IT

May 14, 2002

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### ISSUE

Gross Income Tax – Applicability of Gross Income Tax to Taxpayer

Authority: Rule 45 IAC 1.1-3-3, Rule 45 IAC 1.1-1-3

The taxpayer requests the Department to rule whether or not the presence of a piece of the taxpayer's equipment that is used at a third party's location in Indiana subjects the taxpayer's Indiana gross income to Indiana gross income tax.

### STATEMENT OF FACTS

The taxpayer is a corporation with its headquarters in California. The taxpayer is in the business of selling electronic organizers. The vast majority of its sales are to retailers and distributors to whom the taxpayer solicits sales at their corporate headquarters. Sales to end users, which account for less than 10% of the taxpayer's sales, are made via the taxpayer's web site. The servers for the web site are not located in Indiana.

Additional facts are as follows:

- The taxpayer's presence in the State of Indiana is limited to a piece of equipment that is at a third party location. The equipment is a tooling mold used to manufacture parts for the taxpayer's product.
- There is no sales solicitation, invoicing, advertising or customer support done in Indiana. All orders and approvals are processed at the taxpayer's headquarters in California.
- The majority of the taxpayer's customers are major electronic retailers. The taxpayer solicits sales from its customers at the customer's corporate headquarters, none of which are in Indiana. From the customer's headquarters, they direct the taxpayer on the quantity and destination of product to be shipped.
- All sales to the taxpayer's end users are placed through its web site.
- All shipments into Indiana are from other states and are made via common carrier.

- There is no inventory of goods kept in Indiana.
- The taxpayer currently has no employees in Indiana. In the last calendar year, two employees lived in Indiana and worked in a taxpayer engineering facility in a neighboring state. In addition, one employee worked out of this home in the taxpayer's software marketing department. His activity did not solicit or generate any income in Indiana.

### **DISCUSSION**

Pursuant to Rule 45 IAC 1.1-3-3, gross income derived from the sale of tangible personal property in Indiana by a nonresident is not subject to gross income tax unless the sale is significantly associated with an Indiana business situs established by the nonresident. Rule 45 IAC 1.1-1-3 provides that a "business situs" arises where possession and control of a property right has been localized in some business or investment activity away from the owner's domicile. A taxpayer may establish a business situs by ownership of income-producing property (real or personal) in Indiana. Here, the taxpayer's tooling mold used in Indiana by an Indiana manufacturer to manufacture parts for the taxpayer's product is not directly producing Indiana gross income, therefore, does not establish an Indiana business situs for the taxpayer.

Even if this were not the case, the above referenced Rule 45 IAC 1.1-3-3, states that a sale of tangible personal property to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated and serviced by out-of-state personnel, and the goods are shipped from out-of-state is a sale not completed in Indiana prior to or after shipment in interstate commerce, hence, is not subject to gross income tax.

It is clear then, the presence of the taxpayer's tooling mold in Indiana does not subject the taxpayer's Indiana sales to gross income tax.

### **RULING**

The Department rules that the presence of a piece of the taxpayer's equipment (tooling mold) used at a third party's location in Indiana does not subject the taxpayer's Indiana gross income from Indiana sales to Indiana gross income tax.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.